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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 LEVERTY & ASSOCIATES LAW CHTD,
7 a Nevada Corporation,

8 Plaintiff,

9 v.

10 RAY WARREN EXLEY, an individual,

11 Defendant.

12 RAY WARREN EXLEY, an individual,

13 Counter-Plaintiff,

14 v.

15 LEVERTY & ASSOCIATES LAW CHTD,
16 a Nevada Corporation,

17 Counter-Defendants.

Case No. 3:17-cv-00175-MMD-WGC

ORDER

Re: ECF Nos. 122, 125

18 Before the court is Defendant/Counter-Plaintiff Ray Warren Exley's (Exley) Request for
19 Judicial Notice in Relation to Leverty's Motion for Sanctions. (ECF No. 122.) Plaintiff/Counter-
20 Defendant Leverty & Associates Law CHTD (Leverty) filed a Motion to Strike the Request for
21 Judicial Notice. (ECF No. 125.) Exley opposed the motion to strike. (ECF Nos. 127, 127-1 to
22 127-4.) Leverty filed a reply brief in support of the motion to strike. (ECF No. 129.)

I. BACKGROUND

23 On June 18, 2018, Exley filed a Request for Judicial Notice in Relation to Leverty's
24 Motion for Sanctions. (ECF No. 122.)

25 By way of background, the court enforced a settlement against Exley in this matter and
26 Leverty was permitted to request sanctions against Exley due to his conduct throughout this
27 litigation. Leverty did so, and Exley, as he has done numerous times throughout this litigation,
28 failed to timely respond to this critical motion.

1 After an appearance was made by Exley's fourth attorney in this case, counsel filed a
2 request for judicial notice pursuant to Federal Rule of Evidence 201, asking the court to take
3 judicial notice of a case decided by the Nevada Supreme Court, *Dezzani v. Kern*, 412 P.3d 56
4 (Nev. 2018). (ECF No. 122.) The request for judicial notice asserts that the court should take
5 judicial notice of the Nevada Supreme Court's opinion because it is legal authority adverse to the
6 position taken by Levery in the motion for sanctions. (*Id.*)

7 Levery has moved to strike the request for judicial notice. Levery argues that the
8 Nevada Supreme Court case is not an "adjudicative fact" of which the court can take judicial
9 notice pursuant to Federal Rule of Evidence 201. In addition, Levery argues that Exley
10 improperly raises arguments in opposition to the motion for sanctions when he failed to file a
11 timely response to that motion. Finally, Levery argues that even if it were proper for the court to
12 take judicial notice of *Dezzani*, it is not applicable here.

13 In his response to the motion to strike, Exley argues that the motion for sanctions is really
14 a motion for attorney's fees, and *Dezzani* holds that in Nevada, a law firm representing itself is
15 not entitled to recover its attorney's fees. Exley goes on to assert that the court may take judicial
16 notice of another court's opinion, and that *Dezzani* does apply to the motion for sanctions.

17 In the reply brief, Levery reiterates that the request for judicial notice is improper, and
18 Exley is improperly raising arguments that should have been raised in a response to the motion for
19 sanctions.

20 **II. DISCUSSION**

21 The court will first address the propriety of the request for judicial notice, and then the
22 request that it be stricken.

23 Under Federal Rule of Evidence 201, "a court may take judicial notice of 'matters of public
24 record.'" *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (citation omitted).
25 Specifically, Federal Rule of Evidence 201 governs "judicial notice of an adjudicative fact[.]" Fed.
26 R. Evid. 201(a). "The court may judicially notice a fact that is not subject to reasonable dispute
27 because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be
28 accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

1 Fed. R. Evid. 201(b)(1)-(2). The court “must take judicial notice if a party requests it and the court
2 is supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

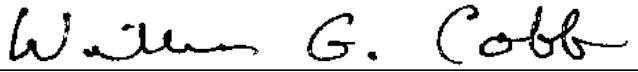
3 To clarify, the court may take judicial notice of the *fact* of a public record, such as another
4 court’s opinion, but “not for the truth of the facts recited therein, but [instead only] for the
5 existence of the opinion, which is not subject to reasonable dispute over its authenticity.” *Lee*,
6 250 F.3d at 690 (quoting *Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group*
7 *Ltd.*, 181 F.3d 410, 426-27 (3rd Cir. 1999)).

8 The court will take judicial notice simply of the *existence* of the Nevada Supreme Court’s
9 opinion, and will not strike the request; however, the court will **not** consider the argument asserted
10 by Exley in connection with the request for judicial notice, in both the request itself, and in Exley’s
11 response to the motion to strike, as the court finds that Exley’s counsel is merely trying to create
12 an end-run around Exley’s failure to timely oppose the motion for sanctions. While the court
13 appreciates that the failure to timely oppose the motion occurred before counsel entered an
14 appearance, the court will not countenance what has been Mr. Exley’s modus operandi throughout
15 this litigation.

16 As such, Exley’s request for judicial notice (ECF No. 122) is **GRANTED**, and the motion
17 to strike the request is **DENIED AS MOOT** (ECF No. 125).

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19 **IT IS SO ORDERED.**

20 DATED: October 5, 2018.

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22 WILLIAM G. COBB
23 UNITED STATES MAGISTRATE JUDGE
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